SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES
OF AMERICA

October Term, 1973

NO. 73-609

JOHN ELLS, JR.,

PETITIONER,
PRO SE,

VS.

THE COUNTY OF WELD; THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WELD; THE ZONING AND PLANNING COMMISSION OF GREELEY, COLORADO; AND THE CITY COUNCIL OF GREELEY, COLORADO,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court

of Appeals for the Tenth Circuit

PETITIONER,
PRO SE,

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NO.

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IN PROPIA PERSONA,

VS.

THE COUNTY OF WELD, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WELD; THE ZONING AND PLANNING COMMISSION OF GREELEY, COLORADO; AND THE CITY COUNCIL OF GREELEY, COLORADO,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI
To the United States Circuit Court
of Appeals for the Tenth Circuit

JOHN ELLS, JR.

TO: The Honorable Warren E.Burger, Chief Justice , and the Associate Justices of the Supreme Court of the United States of America:

JOHN ELLS, JR., PRO SE, the Petitioner, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, dismissing the plaintiff's complaint for failure to state a claim under F.R.C. P., Rule 8 (a), entered in the within appeal on about July 9, 1973.

OPINIONS BELOW

The Opinion of the United States Circuit Court of Appeals for the Tenth Circuit is affixed hereto as an Appendix. The docket was No. 72-1729, and was ostensibly typed

as an unpublished opinion and order of dismissal, which was filed on July 9, 1973.

JURISDICTION

The date of the order and judgment sought to be reviewed, and its time of entry is July 9, 1973.

The Jurisdiction of the Supreme Court of the United States of America is invoked under Title 28, U.S. C.A., Section 1331, raising a Federal Question; and under Amendment 14, Section 1 of the Constitution of the United States of America--the Due Process of Law, and Equal Protection of the Laws, clauses thereof.

I. QUESTIONS PRESENTED FOR REVIEW

Whether Plaintiff's Complaint filed with the United States District

Court for Colorado, at Denver,Colorado on July 13, 1972, alleging a Federal Question under the provisions of Title 28, U.S. C. A., Section 1331, sufficiently states a claim under Rule 8 (a) of the F.R. C. P. to warrant this Petitioner herein to relief in the federal courts?

II.

STATUTES INVOLVED AND CONSTITUTIONAL PROVISIONS INVOLVED:

1. Title 28, U. S. C.A., Section 1331 is involved and ~~xxx~~ declares, to wit:

The District Courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum , or value of $10,000.00, exclusive of interest and costs, and arises under the Constitution , laws, or

treaties of the United States.

2. The Fourteenth Amendment to the Constitution of the United States is involved, and provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the U .S., and the State, wherein they reside. No State shall make or enforce any law which shall abridge the privileges, or immunities,of citizens of the U.S.; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. The interpretation and construction of Rule 8 (a) in respect to this Petitioner's ~~xxxx~~ complaint, as stating a claim for relief, is

involved. See Rule 8 (a) of the F.R. C. P.

III.

CONCISE STATEMENT OF THE CASE

THE Plaintiff Ells's complaint alleged that the action arose under Title 28, U.S.C. A., Section 1331 on a federal question. The complaint alleged that Ells's trailer park and campground were first under the jurisdiction of Weld County. That although the Plaintiff Ells had a license from the State of Colorado since 1964 for his facility, and had spent huge sums developing the property as a trailer park and campground that the County of Weld unreasonably, and arbitrarily zoned the Plaintiff's property as commercial and industrial , contrary to Plaintiff's rights to his zoning

by the State of Colorado as far back as the year 1964. Ells alleged that this improper zoning by the County of Weld was affecting and destroying his vested rights in his property and business, and was denying him the rights, privileges, and immunities , afforded him by the 14th Amendment to the Federal Constitution. The Plaintiff alleged that he had developed 56 mobile home spaces, and had laid out 106 mobile home spaces on his 38 acres of ground, and that damages alone would not adequately compensate him for his enormous losses caused by the said unreasonable, arbitrary and unconstitutional Weld County zoning law, so that he factually had no plain, speedy, or adequate remedy at law. The Plaintiff

further alleged that if the said unconstitutional zoning law of Weld County was allowed to stand, that he, the plaintiff, would be harassed constantly, and would be threatened with repeated suits, fines, and imprisonments, which would interrupt his regular and usual business activities, and cause him irreparable losses.

In his second claim , Plaintiff alleged that the City of Greeley had annexed him and his property and business, and had now passed an unreasonable, arbitrary, and unconstitutional zoning law, depriving the plaintiff of his rights, privileges, and immunities,under the 14th Amendment to the U.S.Constitution. Ells alleged that the said City zoning law is

unconstitutional since it bears no relation whatsoever to public health, public safety, public morals, or general public welfare, and consequently is not a proper exercise of the police power of the municipality.

The Plaintiff incorporated by reference all of the material allegations of the first claim in his second claim, and set forth the usual allegations for injunctive relief.

Plaintiff alleged that as a result of the respective zoning ordinanes, mentioned in his said complaint, he had been damaged to the extent of $700,000.00 actual damages.

Plaintiff alleged that if the said municipal zoning ordinance is not declared unconstitutional, that the plaintiff will be constantly

subjected to harrassment, repeated and continuous fines, and jail sentences.

The Plaintiff prayed for an injunction; for damages in the sum of $700,000.00; and specifically requested the trial court to forever enjoin the City of Greeley, and its agents, and servants, from exercising their said unreasonable, arbitrary, and unconstitutional zoning law , which was depriving him of his vested property rights under the 14th Amendment to the Federal Constitution.

The United States Circuit Court of Appeals for the Tenth Ciruit of the U .S. dismissed the Plaintiff's Complaint on the ground that it failed to state a claim upon which relief could be afforded, as provided by Rule 8 (a) of the F.R. C. P.

The Complaint alleged more than the jurisdictional requirement of $10,000, exclusive of interests and costs, as the value, or amount, in controversy.

IV.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT OF CERTIORARI HEREIN.

1. The decision of the Court of Appeals, as aforesaid, is in direct and irreconcilable conflict with the decisions, and pronouncements, and law of the cases, heretofore already decided by this Honorable Supreme Court of the United States of America.

2. The decision of the Court of Appeals is in direct conflict with the decisions of other courts of appeals under the law and the facts, as alleged in plaintiff's

complaint.

3. The decision of the Court of Appeals for the 10th circuit has so far departed from the accepted and usual course of judicial proceedings in cases of this nature and kind, and has so far sanctioned such a departure by the Colorado U.S. District Court, that an exercise of this Court's power of supervision is called for.

V.

ARGUMENTS AMPLIFYING THE REASONS FOR ALLOWANCE OF THE WRIT OF CERTIORARI:

(1) The plaintiff Ells's complaint states a good and adequate claim for relief under Rule 8 (a) of the F.R.C. P., as decided heretofore in its cases considered by this Honorable Supreme Court of the United States, to wit:

A. Conley Vs. Gibson, 355 U. S.

41, 78 S.Ct. 99, 2 Law Ed. 80, which refers to and cites the case of Maty VS. Grasseli Chemical Co., 303 U.S. 197, 58 S.Ct. 507, 82 L.Ed. 745, held that the Federal Rules of Civil Procedure do not require a complainant to set forth in detail the facts upon which he bases his claim, but require only a short and plain statement of the claim that will afford the defendant fair notice of what the complaint and claim are all about, and the grounds upon which the complaint rests. The said cases further adopt the ruling that holds that technical rules of pleading as a game of skill are rejected by the Federal Rules of pleading; and that all pleadings shall be construed by the federal

rules to do substantial justice, and any pleading giving fair notice of a claim to an opposite party is sufficient.

The case of McMicken Vs. Webb, 36 U.S. 25, 9 L.Ed . 618, 11 Peter 25, held that the object of a complaint is simply to set out the cause of action with a prayer that the def- the defendants be cited to answer to the demand set up against them.

The case of McFaul VS. Ramsey, 61 U.S. 523, 20 Howard 527, 15 L.Ed. 1010 holds that pleadings that set forth the nature of the wrong complained of, and the remedy sought, are sufficient.

(2) The Plaintiff's complaint alleges facts which entitle him to relief under the 14th Amendment to the U.S. Constitution

as shown by the following legal authorities:

(a) The case of Nectow VS. City of Cambridge, 277 U.S . 183, 188, 72 L.Ed. 842, 48 S. Ct. 447, at 448, held: Zoning regulations cannot be imposed if they don't bear a substantial relation to the public health, morals, safety, or general welfare. Nor can such zoning regulations be imposed if they are unreasonable, confiscatory, arbitrary, or without having a proper application under the so-called police power.

(b) The case of Washington Ex. Rel. Seattle Title Trust Co. VS. Roberge , 278 U.S. 116, 73 L.Ed. 210, and ~~278xUxSx~~ 49 S.Ct. 50, held: "The right to devote real property to any legitimate use is property within the protection of

the federa l Constitution. This latter case reached the same reasoning on the law as was resorted to in the Nectow Vs. City of Cambridge case, CITED at 277 U.S. 183, supra. The opinion of the Federal Circuit Court of Appeals for the 10th Circuit in the instant appeal, is in direct conflict with the reported decisions in all other Federal Courts of Appeal.

The following are a few of the decisions reported that support Complainant Ells's complaint, to wit:

(A) Dennis VS. Tonka Bay Village, 151 Fed. 2nd 411, which holds: "A federal court has jurisdiction of an action to enjoin the enforcement of a zoning ordinance , as one arising under the 14th Amendment

to the Federal Constitution , upon the ground that the ordinance deprives the Plaintiff of property without due process of law, and also denies the plaintiff the equal protection of the laws in violation of U.S.C.A. ConstitutionalAmdendment number 14.

(B) The case of City of Dayton Ohio VS. City Railway Co., 16 Fed . 2d 401, held that a zoning ordinance that will heap vast accumulating penalties , fines, and imprisonments, and interruptions of business on a plaintiff, unless the U.S. Courts protects the plaintiff's rights under the 14th Amendment to the U. S.Constitution, will be enjoined by the federal courts. The instant case on writ of error prosecuted by John Ells, Jr., falls within the rulings of

these aforesaid circuit court decisions.

The following cases all support the fact also that Plaintiff alleged a good and sufficient claim in his complaint to entitled him to relief in the Federal courts, to wit:

Home Telegraph & Telephone Co. VS. City of Los Angeles, 33 Sup. Ct. 312, 57 L .Ed. 510, and 277 U.S. 278; and East St. Louis Ry. Co. VS. City of East St. Louis, 13 Fed. 2d 852; and City of Cleveland VS. Cleveland City Ry. Co., 94 Fed. 385, affd. in 24 S.Ct. 756, 194 U.S. 517, 48 L. Ed. 1109; and Kentucky Power and Light Co. VS. City of Maysville, 36 Fed. 2d 816.

VI. CONCLUSION.

FOR THE REASONS HERETOFORE GIVEN HEREIN, THE WRIT OF CERTIORARI

SHOULD NOW BE GRANTED.

Dated: September 25, 1973

John E. Cle Jr.
Petitioner for Certiorari,
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APPENDIX A

FILED

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS 1973

TENTH CIRCUIT

HOWARD K. PHILLIPS
CLERK, UNITED STATES
COURT OF APPEALS
TENTH CIRCUIT

JULY TERM, 1973

JOHN ELLS, JR.,

Plaintiff-Appellant,

v.

THE COUNTY OF WELD, THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WELD, THE ZONING AND PLANNING COMMISSION OF WELD COUNTY, THE CITY OF GREELEY, THE CITY ZONING AND PLANNING COMMISSION OF GREELEY, COLORADO, AND THE CITY COUNCIL OF GREELEY, COLORADO,

Defendants-Appellees.

No. 72-1729

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

(D.C. C-4150)

Appellant filed a memorandum in opposition to summary affirmance pro se.

Before LEWIS, Chief Judge, and PICKETT and SETH, Circuit Judges

PER CURIAM

Appellant, John Ells, Jr., owns and operates a trailer park and campground on land situated in Weld County, Colorado. He brought suit in the district court seeking damages and a permanent injunction enjoining the defendants from enforcing a Weld County zoning ordinance, and a similar ordinance enacted by the City of Greeley, Colorado. He alleges that the two ordinances unreasonably restrict the degree to which he can further expand his existing facilities in violation of his fourteenth amendment rights. Jurisdiction is alleged under 28 U.S.C. §1331. The district court denied relief. We affirm.

The district court denied relief on the ground that it should abstain from deciding the issues presented prior to the presentation of such issues to the Colorado state courts. We affirm on the ground that the appellant fails to state a claim upon which relief could be granted.

No reference is made in the complaint to the specific ordinances which are alleged to be unconstitutional, and the complaint is permeated with opinions and assertions that the ordinances are "arbitrary" and "unconstitutional." Specific factual allegations in support of such opinions and assertions are lacking, and the

complaint thus fails to state a claim upon which relief could be granted. See Coopersmith v. Supreme Court, State of Colorado, 465 F.2d 993 (10th Cir. 1972); International Harvester Co. v. City of Kansas City, Kansas, 308 F.2d 35 (10th Cir. 1962), cert. den. 371 U.S. 948 (1963); Ogden River Water Users' Association v. Weber Basin Water Conservancy, 238 F.2d 936 (10th Cir. 1956).

Upon docketing in this court, appellant was notified that we were considering summary affirmance and of his right to file a memorandum in opposition to such action. We now have appellant's response before us. Nevertheless, after a careful and thorough review of the record and files in this case, we are convinced that the judgment of the district court was correct.

AFFIRMED.